Roadmap on Governors' Executive Authorities During Energy Emergencies

Executive Summary

- The Issue: An energy emergency, such as an electrical grid outage, pipeline disruption or fuel shortage, occurs when an actual or imminent severe energy supply interruption threatens the health, safety, and well-being of a population.
- The Role of States: Governors are solely responsible for declaring a state of emergency. An energy emergency may require governors to execute their emergency powers to aid in response, restoration, and recovery.
- The Road Map: The road map is a tool to help governors prepare in advance of an energy emergency and guide governors' decision making in the event of an energy emergency.
- Steps for States: This roadmap will help governors:
    - Understand state and federal legal authorities,
    - Learn about key decision points,
    - Identify when to execute formal and informal action steps, and
    - Provide guidance on communication and coordination strategies.

Introduction

- How to Use the Roadmap
    - The roadmap is a tool that helps governors and their key advisors determine how to act in the event of an event – whether caused by natural disaster, malicious actor, or human error – that causes an energy emergency.
    - The roadmap will help governors:
        - Understand state and federal legal authorities,
        - Learn about key decision points,
        - Identify when to execute formal and informal action steps, and
        - Provide guidance on communication and coordination strategies.
    - The road map is designed as a policy development tool, allowing a state to use all or portions of the road map as it applies to its unique situation. It should not replace the state's emergency response plan.

- What to Expect:
    - States will find the roadmap helps to:
        - Contextualize energy emergencies and the consequences that occur as a result;
        - Outline action steps for governors to consider when faced with an energy emergency; and
    - It will also provide an appendix that includes examples of past executive orders and actions

- How the Roadmap was Developed:
    - The National Governors Association (NGA) hosted an experts roundtable that included governors' energy advisors, homeland security advisors, emergency managers, federal officials, and private sector representatives to help develop the roadmap. During the roundtable, participants discussed the critical decision points that require governors' executive authority during an energy emergency.

Participants also offered recommendations on strategies governors' offices could take before, during, and after an energy emergency.

- The roadmap also reflects recommendations from past NGA work on energy assurance and emergency management. Specifically, the idea for this roadmap originated from a previous NGA learning lab in New Jersey. State participants at that meeting identified a need to learn more about the potential actions governors could take during an energy emergency.
- For additional information about the road map, please contact Dan Lauf [HYPERLINK "mailto:dlauf@nga.org"] or Alisha Powell at [HYPERLINK "mailto:apowell@nga.org"].

Background

- What is an Energy Emergency?
  - Working definition: An energy emergency, such as an electrical grid outage, pipeline disruption, or fuel shortage occurs when an actual or imminent severe energy supply interruption threatens the health, safety, and well-being of a population.
  - Energy emergency for many states may be a specific designation. At least 12 states give the governor the authority to declare an energy emergency that is distinct from the state's more typical state of emergency declaration. [1] (See Appendix C for more detail.)

- What are the possible consequences of an energy emergency
  - Each energy emergency is unique. Different consequences necessitate different gubernatorial action.
  - The table that follows provides a list of actions that governors and their key advisors should consider.
    - These actions are listed by increasing severity and roughly correspond with an incident's size and scope
    - The table is not holistic, but rather covers the most notable consequences. Because all events and emergencies are unique, we suggest using this table as a helpful guide for decision-making in conjunction with the recommendations of state and local authorities.
  - Energy Emergency Response Table (See Below):

[1] [HYPERLINK "https://www.networkforphl.org/_asset/gxrdwm/Emergency-Declaration-Authorities.pdf"]

Primary Responsibility	Explanation	Possible Consequences	Possible Considerations
Local	The disaster causes minor inconveniences to residents and businesses, but individuals are otherwise able to continue day-to-day life. The emergency response can be led and coordinated by local or private authorities with state support. If residents or businesses are aware of the emergency, they expect it to be resolved within a few hours. Examples might include: • Isolated power outages; • Minor damage to pipelines; and • Severe Weather.	Short-term disruptions in energy services (e.g. short brownouts, power outages)	Monitoring Conditions
			Having Sub-Cabinet Officials Communicating with Local Authorities and the Public
		Poor traffic conditions;	Engaging with Private Industry Stakeholders
			Ordering a "Soft Open" of the Emergency Operations Facility
		Schools and businesses operating at reduced capacity	Reviewing of Emergency Plans
			Ordering Cabinet Officials to Communicate with Local Authorities and the Public
State	The disaster causes some disruption to residents and businesses that forces individuals to make signifcant alterations to their day-to-day lives and/or persists for an extended period of time. The emergency requires state leadership and coordination with local or private support. Residents are likely aware of the emergency, but expect the situation to be resolved in the immediate future. Examples might include: • Prolonged severe weather (e.g. cold wave, heat wave); • Far-reaching technical or infrastructural failure; and • Coordinated cyberattacks that target non-critical infrastructure.	Higher prices for gas and fuel and/or long lines at the gas station	Declaring a State of Emergency
		Public, Commercial, Industrial, and School Buildings Temporarily Closed	Having Governor's Office Lead Communication with the Public
		Critical Services (e.g. hospitals, police departments) reliant on Reserves and/or Back-Up Generators	Fully Opening Emergency Operations Facility
		Some environmental damage	Activating Emergency Contingency Plans
			Engaging with the Federal Government
		Crews deployed to remove debris or repair minor infrastructure damage	Suspending Fuel Carrier Rules on Hours of Service and/or Cargo Weight
		Fuel deliveries temporarily halted or reduced	Suspending Other State Regulations and Statutes
		Difficulty accessing cybernetworks on non-critical infrastructure	Requesting Waivers from the Federal Government
		Severe traffic and gridlock	Facilitating Restoration of Service through Debris Removal, Repair, etc.
		Residents report difficulties heating or cooling homes	Using Mutual Aid Agreements
			Activating the National Guard
Federal	The disaster causes severe disruption for residents and businesses that makes day-to-day life impossible. A heightened state of alarm may persist for weeks, if not months. State resources may not be enough to resolve the disaster and federal support is likely needed. State residents are very aware of the emergency and do not know if/when their lives will return to normalcy. Examples might include: • Systematic power grid failure; • International incident; and • Catastrophic failure of energy safety mechanisms.	Most Public, Commercial, Industrial and School Buildings Closed for an Indeterminate Period	Requesting for federal aid
			Coordinating Resource Allocation/ Distributing Emergency Resources
		Suppliers are unable to guarantee the continued flow of energy	Signing Suplementary Purchasing Contracts
			Mandating Reductions in State Agency Energy Consumption
		Major price hikes	Requesting Reductions in Public Energy Consumption
			Activating Price Gouging Protections
		Significant environmental or infrastructural failure (e.g. multiple pipeline ruptures, leaks, backed-up sewage)	Establishing Fuel Rationing or Monitoring
		Providers unable to access networks due to coordinated or	Restricting the Sale of Energy Resources
			Restricting Vehicle Usage
		Public unrest or panic	Restricting Hours and Days of Operation of Public, Commercial, Industrial and School Buildings
			Deploying the National Guard for Facility Security
		Problems reported nationally or internationally	Seizing Energy Supplies and Other Necessary Resources
			Implementing Evacuation/ Shelter in Place Plans

NGA Work on Energy Assurance

- Over the last decade, NGA has produced several products to improve state energy assurance.
- Consistent guidance for governors on energy assurance practices include:
    - **Developing relationships among a broad group of stakeholders** to include the state energy office, the homeland security office, and the emergency management agency;
    - **Understanding potential risks to infrastructure** by conducting routine threat and risks assessments to identify potential vulnerabilities before an event occurs;
    - **Updating energy assurance plans** to reflect new threats and hazards and that align with the state emergency management plan;
    - **Conducting trainings and exercises** to ensure existing plans are sufficient and to ensure all stakeholders understand their role in emergencies; and
    - **Ensuring internal and external communications** are clear and consistent with the most up-to-date knowledge. Communications should include specific action tailored to the specific audience that will help the response and recover run smoothly.

Steps for Governors to Manage an Energy Emergency

- Step One: Understand Governor's Existing Authorities
- Step Two: Identify the Scope and Scale of the Event
- Step Three: Determine Execution of Action
- Step Four: Coordinate and Communicate with Key Stakeholders

Strategies for States

Step One: Understand Existing Governors' Authorities

Have you considered: Cataloging the governors' legal authorities? Identifying what legal, regulatory, and administrative policies are in place that could slow down the response? Examining your existing contract agreements and procurement procedures?

- In advance of an emergency or declaration, state officials should understand the governor's authorities during an emergency, disaster, or energy emergency. These authorities should be documented, updated, and easy to access electronically and in hard copy for those in the governor's office who may need it. Doing so will facilitate any executive action needed to respond to and recover from the emergency. Many of these will already be included in the state's emergency management plan.
- Those authorities may include:
    - Declaration of Emergency – a common tool that governors execute when the state experiences a natural or manmade event

    - Declaration of an Energy Emergency – a more specific tool that some governors possess that is focused on the energy sector in the governors' authority than a traditional emergency declaration. Importantly, the statutory authorities for an energy emergency may be different for a standard state of emergency and in some cases is more expansive. Many of these will be listed in the state's energy assurance plan.
- Typically, governors will declare an energy emergency after the triggering event; however, they may have the authority to declare an emergency before the event occurs and citizens are impacted. This can be done to ensure energy and emergency response personnel, equipment, and goods are in place and ready to be deployed.
- Governors that do not have the authority to declare energy emergencies and want to explore this path more can pursue legislation to establish that authority by:
    - Identifying the need to have a law that allows for declaration,
    - Determining the consequences of not having such authority, and
    - Working with the legislature to introduce a bill that would create the statutory authority for the governor to declare an energy emergency.
- Governors also should understand the impact of an emergency or energy emergency declaration on other jurisdictions and the private sector, including the lifting of federal regulations.
    - ***Federal Government***: For example, the U.S. Department of Transportation, Environmental Protection Agency, and other agencies will waive certain regulations and restrictions in the event of a state emergency declaration, such as: Hours of Service (HOS) and other safety waivers for trucking governed by the Federal Motor Carrier Safety Administration (FMCSA). Officials should know how state and federal emergency declarations affect regulations to maximize their recovery capacity.
    - ***Private Sector and Utility Companies***: Utilities often depend on their peers across the country through mutual aid agreements. Under those agreements, utilities agree to share trucks, work crews, and equipment with one another to more rapidly recover from utility outages. When these agreements are called upon, work crews and equipment are often required to drive across state boundaries. If an emergency has been declared and certain restrictions are waived within a state, that waiver's authority may end at the border. Restrictions may still be in place in neighboring states, limiting the ability of crews to move and respond. Emergency management and state police should coordinate with neighboring jurisdictions and national coordination mechanisms to get the word out about the emergency waivers to local law enforcement.
    - ***Neighboring states***: Governors should understand how neighboring states will respond during an emergency declaration and if they can work with their peers to create agreements that facilitate industry and governmental response. Additionally, a state of emergency declared by the federal government or another state government may waive some restrictions in non-affected states for motor carriers and work crews traveling interstate in response to the emergency. Governors should be familiar with and enforce those exemptions to expedite response and recovery efforts in other jurisdictions.

Step Two: Identify the Scope and Scale of the Event

Have you considered:

Identifying what statutes will need waivers to allow support the response and recovery?

Identifying what gaps the state has that will require additional external support?

Developing a restoration prioritization list and socializing that with the appropriate parties?

- When an emergency occurs or is imminent, the scope and scale of the problem will dictate the response needed. Governors, in coordination with the state's emergency management authorities, should determine who within their staffs and industry must be convened to adequately respond to the emergency and work with those individuals to understand:
    - ***Consequences of the emergency*** – What was the impact? Was the impact limited solely to the electric sector, or were there cascading effects in other sectors? Has infrastructure been compromised that will hinder recovery efforts?
    - ***Geographic impact*** – How widespread is the emergency? Is it limited to one utility service territory or multiple? Can the state map the affected critical assets and layer that geographic data against utility outage data? Does the outage cross state lines and, if so, will the state be competing with other states for resources?
    - ***Affected population*** – Who is the energy emergency impacting? Are the customers primarily in the residential sectors, commercial sector, or a combination? Are multiple utilities impacted by the event? What are the critical, lifeline assets impacted and what impact will their outages have on the health and safety of residents?
    - ***Outage duration*** – How long will the energy emergency last? Will power be out for hours, days, weeks, or longer? Is there sufficient access to backup generation? Do backup generators have an adequate stock of fuel to continuing operating through the duration of the outage? Can other utilities, such as water, wastewater, and telecommunications, continue operating through the outage? What private sector entities need to be engaged to estimate the duration and impacts of the outage resulting from the event? Dependent on the duration, what are the governor's abilities to implement restoration actions after the event?
- Once the scope, scale, and recovery needs of the emergency have been determined, it is critical to assess the existing regulations and restrictions that will impede recovery and response efforts.
    - Suspension of carrier rules[2]
    - Additional suspension of carrier rules may include:
        - Hours of service
        - Road weight restrictions and the need to stop at weigh stations
    - Toll waivers for utility and emergency response crews
    - Fuel rationing

[2] Emergency treatment under the Federal Motor Carrier Safety Regulations (FMCSR) is automatically triggered under a declared emergency (as defined in the FMCSR) that results in reduced fuel levels. A declaration of emergency under the FMCSR, which can be declared by the President of the United States, the governor of the impacted state, or by the Federal Motor Carrier Safety Administration (FMCSA) Field Administrator for the geographical area in which the emergency has occurred, initiates complete exemption from all of the safety regulations contained under 49 CFR Parts 390—399.

        - Priority access for emergency personnel and utility crews
        - Rationing for the public in times of shortage
    - Price gouging protections
    - Pollution control regulations
        - By waiving certain fuel standards, the Federal Government can ensure that an adequate supply of fuel is available, especially for emergency operations and the lifeline sectors.[3]
    - Additional pollution control regulations
        - Suspend permitting and other restrictions for air emissions and wastewater discharge
    - Access and Credentialing
        - Site access restrictions
        - Volunteer access and credentials
        - Out-of-state access and credentials
        - Equipment and supply access

Step Three: Determine Execution of Action

Have you considered:
Developing executive order templates?
Implementing feedback mechanisms to share information with local governments to stay abreast of the situation?

- Once the scope, scale, and nature of the event are determined, governors can work with their staffs and industry to determine a response. These actions, such as fuel and permit waivers, may include movement of people and goods, transportation of restoration and recovery equipment, allowing for adverse environmental impacts that may not otherwise be tolerable, and the deployment of communications, emergency response, and other support services.
- Governors have a few options for how to act in the event of an energy emergency. Those types of action include:
    - Formal Action
        - Declaring a state of emergency or declaring an energy emergency (if governor has that authority)
        - Issue an executive order or other equivalent executive directive
    - Informal Action
        - Soft open of the emergency operations center where personnel can monitor conditions but are not in an activation mode
        - Public service announcements
        - Work with non-affected states/interstate coordination
        - Leverage relationships with state officials, other governors, businesses, etc.

[3] The Clean Air Act Section 211(c)(4)(c) specifies the criteria for granting a fuels waiver and the conditions that must be included in a fuels waiver. Normally, a formal request for an EPA fuels waiver is made by, or on behalf of, the governor of the impacted state to the EPA Administrator

        - Work with the media
        - Delegate responsibility to state agencies.

    - No Action
        - Although this roadmap focuses heavily on the governors' use of executive action some events may not warrant an emergency declaration. However, governors may still want to take some type of informal action.
        - In this instance, governors should continue monitoring the situation and determine if they need to reevaluate the state's role in response and recovery if the circumstances change.

Step Four: Coordination and Communication

Have you considered:
Developing a crisis communications protocol?
Identifying alternative communication methods in case traditional means are inoperable?
Sharing your anticipated needs and priorities with partners to include the federal government, neighboring states, private sector, and non-governmental organizations?

- Coordinating activity across sectors and groups is a significant undertaking. Governors will need to consider how to coordinate in several ways:
    - Federal-state coordination through FEMA Regions and appropriate Federal Agencies.
    - Interstate coordination through the mutual aid agreements and waiver exemptions
        - [HYPERLINK "https://www.emacweb.org/index.php"]: EMAC is a mutual aid agreement among the 50 states, D.C. Guam, Puerto Rico, and the U.S. Virgin Islands that allows for the sharing of personnel, equipment, and commodities to states impacted by disasters.
        - Electric utility mutual assistance agreements:
            - [HYPERLINK "http://www.eei.org/issuesandpolicy/electricreliability/mutualassistance/Pages/default.aspx"]: RMAGs are regional groups that coordinate mutual aid assistance among investor-owned utilities by providing restoration workers and logistics coordination across utility service territories to facilitate restoration efforts within an affected region.
                - Mutual assistance for public power utilities is coordinated through the American Public Power Association's Utilities Mutual Aid Regions. There is also a national mutual aid agreement in place for more than 2,000 public power and rural electric cooperative utilities.
                - For more information, see: [HYPERLINK "https://pubs.naruc.org/pub/536E475E-2354-D714-5130-C13478337428"]
        - Working with non-affected states.

        - Working with neighboring states to ensure that exemptions are implemented to achieve their intended effect.
    - Intrastate coordination between state and local agencies as well as those agencies that are outside of emergency management. Examples of those agencies and assistance they can offer include:
        - State departments that are responsible for weights and measures, as they may have information on transportation fuel availability.
        - State environment department to issue fuel and other relevant waivers.
        - State energy offices, and utility regulators to coordinate with the electric sector.
    - Private sector coordination (utility companies)
    - Non-governmental coordination (i.e. volunteers)
- Form a Communications Plan
    - Communications is key to ensuring that all parties involved are aware of the current state of affairs. Governors need to incorporate the following components into that plan
        - Identifying types of communication methods
            - Identifying a clear communication chain
        - Tailoring the message that governors or their representatives send to all stakeholders
            - Coordinating and unifying the message with the private sector and the federal government
            - Communicating with constituents
            - Ensuring that information provided aligns with public records law
        - Spreading the message
            - Leveraging the Joint Information Center
            - Using social media

Appendix A: Example Executive Orders

(Insert [HYPERLINK "https://governor.iowa.gov/sites/default/files/wp-content/uploads/2014/01/1-31-14-Energy-disaster-proclamation.pdf"] **here.)**

(Insert [HYPERLINK "https://www.fmcsa.dot.gov/sites/fmcsa.dot.gov/files/docs/MI-EO-2014-1.pdf"] **here.)**

(Insert [HYPERLINK "http://www.ema.ohio.gov/Documents/Releases/2014/20140214_Energy_Emergency_Extension_Proclamation.pdf"] **here.)**

Appendix B: List of Notable Executive Orders

(*See Energy Emergency Proclamations* [HYPERLINK "https://ngaorg1.sharepoint.com/Center/EET/Shared%20Documents/Energy%20Assurance/Executive%20Order%20RT%20and%20Roadmap/Reference%20Materials/EnergyEmergencyProclamations_032317.xlsx?web=1"] *in the Resources folder for examples*)

State	Order / Proclamation	Date	Activates Emergency Response Plans	Suspends Fuel Carrier Rules on Hours of Service	Suspends Fuel Carrier Rules on Loads/ Cargo	Activates Price Gouging Protections	Establishes Fuel Rationing or Monitoring	Orders National Guard Assistance
GA	[HYPERLINK "http://sonnyperdue.georgia.gov/gov/exorders/2005/aug/08_31_05_01.pdf"]	31 Aug 2005	-	-	-	Yes	-	-
IN	[HYPERLINK "http://www.in.gov/legislative/iac/xml/old-ir/Vol27/03Dec/12EXECOD.PDF"]	24 Jan 2003	-	Yes	-	-	-	-
IN	[HYPERLINK "https://secure.in.gov/governorhistory/mikepence/files/EO_14-2.pdf"]	29 Jan 2014	-	-	Yes	-	-	-
IA	[HYPERLINK "https://governor.iowa.gov/2013/12/gov-branstad-signs-disaster-declaration-allowing-for-more-propane-transport"]	18 Dec 2013	-	Yes	-	-	-	-
IA	[HYPERLINK "https://governor.iowa.gov/sites/d	31 Jan 2014	Yes	-	-	-	-	-

	efault/files/wp-content/uploads/2014/01/1-31-14-Energy-disaster-proclamation.pdf "]							
ME	[HYPERLINK "http://www.maine.gov/tools/whatsnew/index.php?topic=Gov+News&id=726599&v=article2011"]	20 Dec 2016	-	Yes	-	-	-	-
MI	[HYPERLINK "https://www.michigan.gov/documents/EO-17_135864_7.pdf"]	14 Sep 2005	-	Yes	Yes	-	-	-
MI	[HYPERLINK "https://www.michigan.gov/documents/snyder/EO_2013-11_443105_7.pdf"]	20 Dec 2013	-	Yes	-	-	-	-
MI	[HYPERLINK "https://www.fmcsa.dot.gov/sites/fmcsa.dot.gov/files/docs/MI-EO-2014-1.pdf"]	10 Jan 2014	-	Yes	Yes	-	-	-
MI	[HYPERLINK "http://www.michigan.gov/documents/snyder/EO_2016-10_525181_7.pd	06 Jun 2016	-	Yes	-	-	-	-

	f"]							
MN	[HYPERLINK "https://mn.gov/governor/assets/EO_14_16.pdf_tcm1055-94600.pdf"]	04 Oct 2014	-	Yes	-	-	-	-
MN	[HYPERLINK "https://mn.gov/governor/assets/EO_14-17-2014.pdf_tcm1055-92941.pdf"]	24 Oct 2014	-	Yes	-	-	-	-
MT	[HYPERLINK "https://governor.mt.gov/Portals/16/docs/EO-16-2013_Fuel_Supply.pdf"]	23 Dec 2013	-	Yes	-	-	-	-
MT	[HYPERLINK "https://governor.mt.gov/Portals/16/docs/EO-2-2014_Exempting_Certain_Carriers_From_Hours_Of_Service_Regulations.pdf"]	14 Feb 2014	-	Yes	-	-	-	-
MT	[HYPERLINK "https://governor.mt.gov/Portals/16/docs/2016EOs/EO_22-2016_Energy%20Emergency.pdf?ver=2017-01-03-072529-280"]	28 Dec 2016	-	Yes	-	-	-	-
MT	[HYPERLINK "https://governor	21 Feb 2017	-	Yes	-	-	-	-

	.mt.gov/Portals/16/docs/2017EOs/EO-1-2017%20Energy%20Emergency.pdf?ver=2017-02-01-090729-073"]							
NE	[HYPERLINK "http://govdocs.nebraska.gov/docs/pilot/pubs/eofiles/07-04.pdf"]	21 Jul 2006	-	Yes	-	-	-	-
NE	[HYPERLINK "http://govdocs.nebraska.gov/docs/pilot/pubs/EOIndex.html"]	10 Jul 2007	-	Yes	-	-	-	-
NE	[HYPERLINK "http://govdocs.nebraska.gov/docs/pilot/pubs/eofiles/07-06.pdf"]	09 Aug 2007	-	Yes	-	-	-	-
NE	[HYPERLINK "http://govdocs.nebraska.gov/docs/pilot/pubs/eofiles/07-05.pdf"]	30 Aug 2007	-	Yes	-	-	-	-
NE	[HYPERLINK "http://govdocs.nebraska.gov/docs/pilot/pubs/eofiles/13-01.pdf"]	26 Oct 2013	-	Yes	-	-	-	-
NJ	[HYPERLINK "http://nj.gov/infobank/circular/eow4.htm"]	19 Jan 1994	-	-	-	-	Yes	-
NJ	[HYPERLINK "http://nj.gov/infobank/circular/eo	02 Nov 2012	-	-	-	-	Yes	-

	cc108.pdf"]							
NM	[HYPERLINK "http://www.governor.state.nm.us/uploads/FileLinks/5634a3c59b924b1ba8ca6072b986dc45/EO_2015_022_LIQUID_PETROLEUM_EMERGENCY_DECLARATION.pdf"]	28 Dec 2015	-	Yes	-	-	-	-
OH	[HYPERLINK "http://www.ema.ohio.gov/Documents/Releases/2014/20140214_Energy_Emergency_Extension_Proclamation.pdf"]	14 Feb 2014	-	Yes	-	-	Yes	Yes
TN	[HYPERLINK "http://share.tn.gov/sos/pub/execorders/exec-orders-haslam35.pdf"]	21 Jan 2014	-	Yes	-	-	-	-
TN	[HYPERLINK "http://share.tn.gov/sos/pub/execorders/exec-orders-haslam36.pdf"]	16 Sep 2016	-	Yes	-	-	-	-
WI	[HYPERLINK "https://www.fmcsa.dot.gov/sites/fmcsa.dot.gov/files/docs/EO-148-Energy_Emergency_Due_to_Inter	09 Jan 2015	-	Yes	-	-	-	-

	mittent_Propane _Pipeline_Supplies.pdf"]							

Appendix B: Example Federal Regulation Exemption Request Waivers

Federal Agency	Waiver / Permit	Description	Example
Department of Transportation	**Hazardous Material Permits**	The Pipeline and Hazardous Materials Safety Administration (PHMSA) may issue special permits authorizing a variance of specified hazardous materials transportation safety regulations. This provides for transportation of hazardous materials in a way that achieves a safety level at least equal to that required under existing law; or that is consistent with the public interest and Chapter 51, Title 49, if a required safety level does not exist. There are three types of special permits : (1) those authorizing the offer of a hazardous material for transportation in a different manner than otherwise required in the Hazardous Materials Regulations (HMR); (2) those authorizing the transport of a hazardous material in a different manner than required in the HMR; and (3) those authorizing the manufacture and sale of a packaging for use in transporting hazardous material.	[HYPERLINK "https://www.phmsa.dot.gov/staticfiles/PHMSA/SPA_App/OfferDocuments/SP9198_2010051148.pdf"]

		when the packaging does not meet the design specification or performance requirements in the HMR.	
	"Hours of Service" and Other Carrier Safety Regulations	During an emergency, officials may waive regulations pertaining to recordkeeping, driver qualifications, pre-trip inspections and fatigued operations, carrier parts and accessories, hours of service, and carrier maintenance. Most exemptions occur automatically upon the declaration of an emergency by the president, governor, or local official. Presidential and State declarations are effective for up to 30 days, and local declarations are effective for up to 5 days. Only a Federal Motor Carrier Safety Administration (FMCSA) Regional or Field Administrator has authority to extend the waivers beyond the initial 30 days and to place additional restrictions on the waivers. The waivers apply to any commercial motor vehicle responding from anywhere in the United States to provide	[HYPERLINK "https://www.fmcsa.dot.gov/sites/fmcsa.dot.gov/files/docs/emergency/82971/27-states-and-dc-fuel-shortage-emergency-declaration-9-11-2017_0.pdf"]

		direct relief to the emergency.	
	FRA Emergency Relief Docket	The FRA Emergency Relief Docket (ERD) is a special provision in USDOT's regulations which provides for the expedited review and approval of waiver requests from railroads related to a specific emergency. The Administrator of the FRA has the authority to designate specific events as emergencies and, therefore, to trigger the opening of the ERD. Once opened, the ERD can grant relief from applicable inspection date requirements. The ERD allows railroads to seek expedited requests for waivers related to the emergency pursuant to 49 C.F.R. 211.45.	[HYPERLINK "https://www.fra.dot.gov/Elib/Document/17058"]
Department of Energy	[HYPERLINK "https://energy.gov/oe/services/energy-assurance/response-and-restoration/energy-waiver-library" \l "FMSCA"]	During energy emergencies, regulatory assistance (or a "waiver") is often used to expedite restoration when the situation warrants. Temporarily waiving enforcement of certain safety, environmental, and statutory requirements, when appropriate, can accelerate	

		response efforts, restoring power and moving fuel more quickly to affected citizens. The Department of Energy consolidated and verified resources from across the Federal Government to create this central location for common waivers and special permits used for energy response, to include background on the waiver or special permit, historical examples of past use, links to previously issued waivers, and an appropriate point of contact to request such waivers should the need arise.	
	[HYPERLINK "https://energy.gov/oe/services/electricity-policy-coordination-and-implementation/other-regulatory-efforts/does-use"]	Under FPA section 202(c) during the continuance of a war in which the United States is engaged or when an emergency exists by reason of a sudden increase in the demand for electric energy, or a shortage of electric energy, or of facilities for the generation or transmission of electric energy, or of the fuel or water for generating facilities, or other causes, the Secretary of Energy may require by order temporary connections of facilities, and generation, delivery, interchange, or transmission of electricity as the Secretary determines will best meet the emergency and serve the public interest. 16 U.S.C. § 824a(c)	[HYPERLINK "https://energy.gov/sites/prod/files/202%28c%29%20order%20December%2014%2C%202000%20-%20California.pdf"]

Environmental Protection Agency	[HYPERLINK "https://www.epa.gov/sites/production/files/2016-11/documents/multistatefuelwaivernovember.pdf"]	RFG is a blended gasoline and cleaner burning alternative to conventional gasoline that is required to meet a threshold of air quality metrics in 17 states and the District of Columbia. During emergency response situations, officials may waive these air quality metrics to ensure that an adequate supply of fuel is available.	[HYPERLINK "https://www.epa.gov/sites/production/files/2016-11/documents/multistatefuelwaivernovember.pdf"]
	Gasoline Reid Vapor Pressure Waiver	EPA regulates the vapor pressure of gasoline sold at retail stations during the summer ozone season to reduce evaporative emissions from gasoline that contribute to ground-level ozone and diminish the effects of ozone-related health problems. Depending upon the state and month, gasoline may not exceed 7.8 psi or 9.0 psi. During an emergency, these air quality regulations may be suspended to ensure continued access to fuel.	[HYPERLINK "https://www.epa.gov/sites/production/files/2016-09/documents/fuelwaiverconcerningatlantaandnashville91416.pdf"]
Department of Homeland Security	**Jones Act Waivers**	The Merchant Marine Act of 1920 (Jones Act) requires that all goods transported by water between U.S. ports be carried on U.S. flag ships. Requests for waivers of certain provisions of the act are reviewed by Maritime Administration's ([HYPERLINK "https://www.marad.dot.gov/ports/maritime-emergency-	[HYPERLINK "https://www.dhs.gov/sites/default/files/publications/17_0908_AS1_Jones-Act-Waiver.pdf"]

		preparedness-and-response/"]) Office of Emergency Preparedness and the Department of Homeland Security on a case- by- case basis. DHS issues the waiver based on assistance from MARAD in determining the necessity and extent and duration of waiver by identifying available U.S. flagged sealift capacity. Waivers can be granted in cases of national emergencies or in cases of strategic interest.	
Internal Revenue Service	**Diesel Fuel Penalty Waiver**	The IRS imposes a tax penalty of 24.4 cents per gallon on diesel fuel sold for "on road" use. Dyed diesel fuel used is not ordinarily subject to this tax. Typically, if a diesel fuel that was not subject to this excise tax was converted to use for "on road" purposes, the IRS would require that use to be reported and the tax paid accordingly. When a waiver is instated, the tax penalty may not be applied to individuals who sell or use dyed diesel fuel for highway use.	[HYPERLINK "https://web.archive.org/web/20130502110226/http://www.irs.gov/uac/Newsroom/IRS-Waives-Diesel-Fuel-Penalty-Due-to-Hurricane-Sandy"]

Appendix C: Examples of Authorizing Legislation for Governor-Declared Energy Emergencies

State	Code	Actions for the Governor	Determining an Emergency
IN	[HYPERLINK "https://iga.in.gov/legislative/laws/2014/ic/titles/010"]	Implement programs, controls, standards, priorities, and quotas for the conservation and consumption of energy, including plans and commission regulations for the curtailment of energy; Suspend and modify state pollution control standards and requirements; Establish and implement intrastate regional programs and agreements for the purposes of coordinating the energy program and actions; and Suspend the provisions of any state statute regulating transportation.	The availability of regional and national energy resources Local, state, regional, and national energy needs and shortages; The availability of short term alternative supplies on a local, state, regional, and national basis; The economic effect of the declaration and the implementation of any curtailment or conservation plans.
MA	[HYPERLINK "https://malegislature.gov/Laws/GeneralLaws/PartI/TitleII/Chapter25A/Section8"]	Implement energy supply shortage contingency plans including conservation contingency plans and rationing contingency plans as have been developed by the department and which conform to the substantive requirements Implement any petroleum plan or other measures which comply with the substantive requirements	When there is an actual or imminent severe energy supply interruption in the commonwealth, or resulting from the obligating of the United States under the international energy program of the United States, or like obligation
ME	[	Establish and implement programs, controls, standards, priorities and quotas for the allocation, conservation and	When an actual or impending acute

	HYPERLINK "http://www.maincelegislature.org/legis/statutes/37-b/title37-Bsec742.html"]	consumption of energy resources; Regulate the hours and days during which nonresidential buildings may be open and the temperatures at which they may be maintained; Regulate the use of gasoline and diesel-powered land vehicles, watercraft and aircraft; After consulting, when appropriate, with the New England governors and upon the recommendations of the Public Utilities Commission, regulate the generation, distribution and consumption of electricity; Establish temporary state and local boards and agencies; Establish and implement programs and agreements for the purposes of coordinating the emergency energy response of the State with those of the Federal Government and of other states and localities; Temporarily suspend truck weight and size regulations, but not in conflict with federal regulations; Regulate the storage, distribution and consumption of home heating oil; and If the energy emergency was caused by a lack of electric grid reliability in this State resulting from insufficient capacity resources, take appropriate action, in consultation with the Public Utilities Commission, to procure sufficient capacity resources including generation capacity and interruptible, demand response or energy capacity resources. When an energy emergency proclamation is in effect, the Governor may call the Board of Environmental Protection into extraordinary session to consider temporary waivers or suspensions of rules and standards related to air and water quality necessary to relieve then existing energy shortages.	shortage in energy resources threatens the health, safety or welfare of the citizens of the State
MI	[HYPERLINK "http://www.legislature.mi.gov/(S(ro41mxttlvg5gjx1ecvzizyr))/mileg.aspx?page=getObje	The governor may impose restrictions on: • The interior temperature of public, commercial, industrial, and school buildings. • Hours and days during which public, commercial, industrial, and school buildings may be open. • Conditions under which energy resources may be sold to consumers. • Lighting levels in public, commercial, industrial, and school buildings. • Use of display and decorative lighting. • Use of privately owned vehicles or a reduction in speed limits. • Use of public transportation including directions to close a public transportation facility. • Use of pupil transportation programs operated by public schools. Direct an energy resource supplier to provide an energy resource to a health facility; school; public utility; public transit authority; fire or police station or vehicle; newspaper or television or radio station for the purpose of relaying emergency instructions or other emergency message; food producer, processor, retailer, or wholesaler; and to any other person or facility which provides essential services for the health, safety, and welfare of residents of this state.	Upon notification of an impending energy emergency by the energy advisory committee under section 2(2), or upon the governor's own initiative if the governor finds that an energy emergency exists or is imminent

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MT	[HYPERLINK "http://leg.mt.gov/bills/mca/90/4/90-4-310.htm"]	Implement programs, controls, standards, priorities, and quotas for the production, allocation, conservation, and consumption of energy, including plans for the curtailment of energy. Suspend and modify existing pollution control standards and requirements or any other standards or requirements affecting or affected by the use of energy, including those relating to air or water quality control; and Establish and implement regional programs and agreements for the purposes of coordinating the energy programs and actions of the state with those of the federal government and of other states, localities, and other persons.	Upon finding that a situation exists that threatens to seriously disrupt or diminish energy supplies to the extent that life, health, or property may be jeopardized
NV	[HYPERLINK "https://www.leg.state.nv.us/NRS/NRS-416.html" \l "NRS416Sec090"]	Collect and compile information concerning current, past and future sources, users and supplies of water and energy. Devise contingency plans that provide for conserving, allocating, using, increasing the supply or taking whatever steps are necessary to prevent a water or energy emergency, or in the event of a water or energy emergency, to ensure the fairest and most advantageous use of water or energy or of any water or energy source or supply. Prepare reports explaining the purposes and projected economic impact of the proposed contingency plans and indicating those areas in which the plans are inconsistent with any existing rule, order, plan or regulation Serve as liaison with the Federal Government and other states on water and energy matters Request any state agency or political subdivision of the State to supply any information in its possession or readily accessible to it concerning the use, supply, source, allocation or distribution of water or energy. Request any business, industry, trade association or other organization or person doing business or representing persons doing business in this state to supply any information in their possession or that can reasonably be assumed to be readily accessible to them concerning the use, supply, source, allocation or distribution of water or energy. Issue a subpoena to any officer or agent of any such public or private entity to… give oral testimony or produce any relevant book, paper, account, memorandum or record… to deal with any actual or impending emergency in this state. Issue, amend or rescind any regulation or order designed to alleviate or manage… the water or energy emergency including without limitation the regulation as necessary of the allocation, conservation or use of water or energy… Amend or suspend any regulation of any state agency or political subdivision of the State if the Governor determines that the action is necessary to lessen the adverse impact of the water or energy emergency on the people of this state.	The President of the United States or Congress has declared that an actual or impending water or energy emergency exists in this state or elsewhere in the United States; or The health, safety or welfare of the citizens of this state is threatened by reason of an actual or impending acute shortage in usable water or energy resources

		Utilize the services, equipment, supplies and facilities of any state agency or political subdivision of the State to the greatest extent practicable and necessary to meet the water or energy emergency.	
MN	[HYPERLINK "https://www.revisor.mn.gov/rules/?id=7620&view=chapter&keyword_type=all&keyword=7620&redirect=0" \l "rule.7620.0210"]	During a declared energy supply emergency, the [state] will set up an energy operating center. In an energy supply emergency resulting from a shortage of fuel oil, [gasoline, diesel fuel, or other petroleum product used as a motor fuel] highest priority uses are those essential for the health and safety of the citizens of the state. Second priority fuel oil uses are those necessary to minimize the economic disruption of a fuel oil shortage. Suppliers shall be requested to deliver fuel oil to higher priority consumers before lower priority consumers, where no practicable substitute fuels are available Homeowners and renters shall be requested to turn their thermostats back to between 62 degrees Fahrenheit and 66 degrees Fahrenheit during the day and 60 degrees Fahrenheit and 58 degrees Fahrenheit during the night and unoccupied hours and shall be requested to set back water heater thermostats to between 105 degrees Fahrenheit and 115 degrees Fahrenheit (or the lowest setting). Voluntary industrial, commercial, government, and residential conservation targets shall be established to reduce energy usage, including electricity and natural gas, especially during periods of peak usage. Commercial and industrial establishments shall be requested to reduce their hours of operations where this action saves energy Commercial and industrial users shall be requested to release fuel oil from inventory supplies. Business, industrial, and government institutions shall be requested to close nonessential buildings. Owners and operators of diesel-powered automobiles may be requested to substantially reduce or discontinue use of their diesel vehicles during severe fuel oil shortages	Shortage of energy resources, including petroleum products, natural gas, or electricity. When the Department of Commerce When the department's forecast shows that short-term demand for a fuel or fuels exceeds the forecast of short-term supply and that a supply shortage will occur within three months, the commissioner may recommend that an energy supply emergency be declared by submitting a written statement to the Executive Council or legislature The Executive Council (consisting of the governor, the lieutenant governor, the attorney general, the auditor, and the secretary of state) or the legislature has responsibility for declaring an energy supply emergency
NM	[HYPERLINK "http://public.nmco	Imposition of restrictions on any wasteful, inefficient or nonessential use of energy resources; Ordering changes in operation schedules and working hours; Curtailing the use of land vehicles, watercraft and aircraft; and Such other provisions as are deemed necessary to reduce the consumption of energy resources.	

	mpcomm.us/nmpublic/gateway.dll/?f=templates&fn=default.htm"]		
NC	[HYPERLINK "http://www.ncleg.net/enactedlegislation/statutes/pdf/bychapter/chapter_113b.pdf"]	Upon the declaration of an energy crisis by the Governor, a Legislative Committee on Energy Crisis Management. The Governor shall immediately consult with the Legislative Committee about the emergency proposals Implementation of programs, controls, standards, priorities, and quotas for the allocation, conservation and consumption of energy resources; the suspension and modification of existing standards and requirements affecting or affected by the use of energy resources, including those relating to air quality control and the hours and days during which public buildings may or may not be required to remain open; and the establishment and implementation of regional programs and agreements for the purposes of coordinating the energy resource programs and actions of the State with those of the federal government and of other states and localities.	An energy crisis exists when the health, welfare or safety of the citizens of North Carolina are threatened by reason of an actual or impending acute shortage in usable, necessary energy resources
OH	[HYPERLINK "http:	Restrict the energy consumption of state and local government offices and industrial and commercial establishments; Restrict or curtail public or private transportation or require or encourage the use of car pools or mass transit systems; Order, during a declared energy emergency, any electric light, natural gas or gas, or pipeline company; any supplier subject to certification	Governor finds that the health, safety, or welfare of the residents or of one or more counties of this state is so imminently and threatened by an energy shortage that action of state government is necessary to prevent

	//codes.ohio.gov/orc/4935"]	Order, during a declared energy emergency, other energy conservation or emergency energy production or distribution measures to be taken in order to alleviate hardship; Mobilize emergency management, national guard, law enforcement, or emergency medical services.	loss of life, protect the public health or safety, and prevent unnecessary or avoidable damage to property.
VA	[HYPERLINK "https://law.lis.virginia.gov/vacode/title56/chapter23/section56-586.1/"]	Require any generator or any municipal electric utility that is capable of generating but (i) is not generating or (ii) is not generating at its full potential during such declared electric emergency, to generate, dispatch or sell electricity from a facility that it operates within the Commonwealth The quantity of electricity required to be generated, dispatched or sold, and the duration of such requirements, shall be as determined by the Governor to be necessary to alleviate the electric energy emergency hardship. The Commonwealth shall compensate an entity required to generate, dispatch, or sell electricity pursuant to this subsection, and the operator of any transmission facilities over which the electricity is transmitted The Department of Environmental Quality, the State Air Pollution Control Board, the State Water Control Board, and the Virginia Waste Management Board shall issue any temporary or emergency permit, order, or variance necessary to authorize any permit amendments or other changes needed to meet the requirements imposed under this section	"Eelectric energy emergency" means an unplanned interruption in the generation or transmission of electricity resulting from a hurricane, ice storm, windstorm, earthquake or similar natural phenomena, or from a criminal act affecting such generation or transmission, act of war or act of terrorism, which interruption is (i) of such severity that minimum levels of reliable service cannot be maintained using resources practicably obtainable from the market and (ii) so imminently and substantially threatening to the health, safety or welfare of residents of this Commonwealth that immediate action of state government is necessary to prevent loss of life, protect the public health or safety, and prevent unnecessary or avoidable damage to property

WA	[HYPERLINK "http://apps.leg.wa.gov/rcw/default.aspx?cite=43.21G.040"]	Governor shall present to the committee any proposed plans for programs, controls, standards, and priorities for the production, allocation, and consumption of energy during any current or anticipated condition of energy emergency, any proposed plans for the suspension or modification of existing rules of the Washington Administrative Code, and any other relevant matters the governor deems desirable Suspend or modify existing rules of the Washington Administrative Code of any state agency relating to the consumption of energy by such agency or to the production of energy. Direct any state or local governmental agency to implement programs relating to the consumption of energy by the agency which have been developed by the governor or the agency and reviewed by the committee Implement programs, controls, standards, and priorities for the production, allocation, and consumption of energy; Suspend and modify existing pollution control standards and requirements or any other standards or requirements affecting or affected by the use of energy, including those relating to air or water quality control; and Establish and implement regional programs and agreements for the purposes of coordinating the energy programs and actions of the state with those of the federal government and of other states and localities.	Upon finding that an energy supply alert exists within this state or any part thereof Upon finding that an energy emergency exists within this state or any part thereof

Source: [HYPERLINK "https://www.networkforphl.org/_asset/gxrdwm/Emergency-Declaration-Authorities.pdf"]